

Commonwealth Of Kentucky

Court of Appeals

NO. 2003-CA-002327-MR

CARLOS FAULKNER

APPELLANT

v. APPEAL FROM KENTON CIRCUIT COURT
HONORABLE DOUGLAS M. STEPHENS, JUDGE
ACTION NO. 03-CI-00571

DARRELL COX

APPELLEE

OPINION
AFFIRMING

** ** * * *

BEFORE: KNOPF, TAYLOR, AND VANMETER, JUDGES.

VANMETER, JUDGE: This is a pro se appeal from an order entered by the Kenton Circuit Court dismissing, as untimely, a legal malpractice claim filed against appellee Darrell Cox by appellant Carlos Faulkner. For the reasons stated hereafter, we affirm.

Appellant retained Cox in 1996 to represent him in an RCr 11.42 proceeding alleging that he was afforded ineffective assistance of counsel during earlier criminal proceedings. After concluding that the motion unsupported and conclusory

allegations, the trial court dismissed the claim and imposed sanctions against both appellant and attorney Greg Moore.¹ According to appellant, he was not aware of the dismissal and sanction orders until he received a letter from Cox which was dated January 28, 1997.

Appellant filed a belated appeal, belated petition for discretionary review, and federal and state writs of habeas corpus, all of which were denied prior to August 2000. He also filed a complaint with the Kentucky Bar Association against Cox which resulted in a private admonition. However, appellant's subsequent request to arbitrate the parties' fee dispute was denied as Cox declined to participate in arbitration. Finally, on March 25, 2003, appellant filed the underlying legal malpractice claim against Cox. The trial court dismissed the claim as untimely, and this appeal followed.

KRS 413.245 requires a legal malpractice claim to "be brought within one (1) year from the date of the occurrence or from the date when the cause of action was, or reasonably should have been, discovered by the party injured." Here, it is undisputed that appellant's legal malpractice claim arose out of the dismissal of his RCr 11.42 proceeding. It also is undisputed that appellant became aware of the dismissal and related sanctions no later than February 1997.

¹ Although not specifically addressed in the record, apparently Moore was an attorney under Cox's supervision.

The record therefore clearly shows that appellant knew or reasonably should have known of Cox's alleged malpractice upon his receipt of Cox's January 1997 letter regarding the dismissal of the RCr 11.42 proceeding and the imposition of sanctions. The one-year limitations period therefore began to run upon the receipt of that letter, and no grounds exist to claim that the running of this period was tolled by any other timely events. Hence, it follows that the malpractice action filed in March 2003, more than six years after appellant received Cox's letter, was filed outside of the applicable one-year limitations period and was properly dismissed by the trial court.

The court's order is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

Carlos Faulkner, Pro se
Central City, Kentucky

BRIEF FOR APPELLEE:

No Appellee Brief